

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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**U.S. BANK NATIONAL ASSOCIATION
AS TRUSTEE FOR THE SPECIALTY
UNDERWRITING AND RESIDENTIAL
FINANCE TRUST MORTGAGE LOAN
ASSET-BACKED CERTIFICATES
SERIES 2006-BC4.**

Case No. 3:16-cv-00501-MMD-CSD

Plaintiff.

v.

WESTLAND REAL ESTATE DEVELOPMENT AND INVESTMENTS, *et al.*

Defendants.

15 Plaintiff U.S. Bank National Association, as Trustee for the Specialty Underwriting
16 and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-
17 BC4 sued Defendants Westland Real Estate Development and Investments, Thunder
18 Properties Inc., and Phil Frink & Associates, Inc.,¹ bringing a single claim for quiet title to
19 establish that a deed of trust (“DOT”) that was allegedly assigned to Plaintiff continues to
20 encumber the property commonly known as 17655 Little Peak Court, Cold Springs,
21 Nevada 89508 (the “Property”) following a homeowners’ association foreclosure sale held
22 back in 2011. (ECF No. 1.) In reviewing the pending motions (ECF Nos. 91, 92, 93, 101,
23 104), the Court noticed a potential issue going to Plaintiff’s standing. Because the Court
24 is “required sua sponte to examine jurisdictional issues such as standing[,]” *Bernhardt v.*
25 *Cnty. of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2002) (citation omitted), and as further

27 ¹Phil Frink & Associates, Inc. was apparently served (ECF No. 33) but never
28 appeared or participated in the pending briefing. Westland Real Estate Development and
Investments disclaimed any interest in the Property. (ECF No. 37.) So Thunder is the only
Defendant who has been actively participating in the pending briefing.

1 explained below, the Court will order Plaintiff to show cause why it has standing to
2 prosecute this action.

3 Plaintiff alleges that the DOT was assigned to it by National City Bank f/k/a National
4 City Bank of Indiana in an assignment recorded with the Washoe County Recorder as
5 Instrument No. 3850376. (ECF No. 1 at 4.) No copy of this assignment is attached to
6 Plaintiff's Complaint. Similarly, in its pending motion for summary judgment, Plaintiff
7 states that, “[t]hrough a series of assignments, US Bank became beneficiary of the deed
8 of trust in July 2009.” (ECF No. 91 at 3.) This sentence is followed by a citation to Plaintiff's
9 Exhibit 2. (*Id.*) However, Plaintiff's Exhibit 2 contains only one assignment, not two—and
10 the only assignment is from Integrity 1st Financial, LLC to National City Bank of Indiana.
11 (ECF No. 91-2.) The assignment from National City Bank of Indiana to Plaintiff is missing
12 from the exhibit. (*Id.*) This prompted the Court to search for the document referenced in
13 the Complaint, Instrument No. 3850376 (ECF No. 1 at 4), on the Washoe County
14 Recorder's Office's website to see if the Court could instead take judicial notice of the
15 assignment apparently missing from the exhibit. See, e.g., *Dowers v. Nationstar Mortg.,*
16 *LLC*, 852 F.3d 964, 967 n.1 (9th Cir. 2017) (taking judicial notice in pertinent part of
17 “publicly-recorded documents”). However, this search revealed that the document with
18 Instrument No. 3850376 is the Notice of Delinquent Assessment and Claim of Lein [sic]
19 Homeowners Association signed by Gayle A. Kern, Esq. and dated February 16, 2010.
20 See *Washoe Country Recorder's Office*, Document Search and Copies for Document #
21 3850376 (Last Accessed June 25, 2024),
22 <https://icris.washoecounty.us/ssrecorder/document/DOC366S6523?search=DOCSEAR>
23 CH1503S1; see also <https://perma.cc/2GQM-XHC3> (archived copy). Said otherwise,
24 Instrument No. 3850376 does not establish that Plaintiff was ever assigned the DOT. And
25 while Amy Bernal, an Assistant Vice President for Bank of America, N.A. swore in 2022
26 that “U.S. Bank has been the beneficiary of record of the deed of trust since July 24,
27 2009[,]” this representation is not supported any evidence, is contradicted by the missing
28 evidence described above, and the Court is skeptical that she would have personal

1 knowledge of Plaintiff's ownership of the repayment rights embodied in the DOT in any
2 event. (ECF No. 91-3 at 3.)

3 In sum, the Court cannot definitively say that Plaintiff was ever assigned the DOT,
4 and therefore cannot definitively say that Plaintiff has standing to prosecute this case. Cf.
5 *Carrington Mortg. Servs., LLC v. Cactus Springs at Fairfax Vill. Homeowners Ass'n*, 814
6 F. App'x 315, 316 (9th Cir. 2020) (finding the plaintiff "had standing to bring a quiet title
7 action because it was assigned the deed of trust.") (citing *Edelstein v. Bank of N.Y.
8 Mellon*, 286 P.3d 249, 260 (Nev. 2012)). The Court cannot resolve the various issues
9 raised in the pending motions unless and until it is satisfied Plaintiff has standing. See
10 *United States v. Viltrakis*, 108 F.3d 1159, 1160 (9th Cir. 1997) ("the jurisdictional issue of
11 standing can be raised at any time, including by the court *sua sponte*.")) (citation omitted).

12 It is therefore ordered that Plaintiff must show cause, in writing (no more than five
13 pages excluding exhibits), within 14 days, why and how it has standing to prosecute this
14 case.

15 It is further ordered that Thunder Properties may file a response to Plaintiff's show
16 cause response (also limited to no more than five pages excluding exhibits) within seven
17 days of Plaintiff's filing. No reply will be permitted. The Court may set a hearing after
18 reviewing both responses.

19 DATED THIS 25th Day of June 2024.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE